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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant :	Scott C. Harris	Group Art Unit 3679
Appl. No. :	09/669,805	
Filed :	September 26, 2000	
For :	REAL TIME AUCTION WITH END GAME	
Examiner :	Ernesto Garcia	

Applicant's Brief on Appeal  
Resubmitted 4/11/2008

Commissioner For Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This appeal brief is herewith resubmitted in response to the notice of noncompliant appeal brief dated March 13, 2008.

This resubmitted brief on appeal is submitted within the 30 day time period set forth in the notice of non compliance, and thereby perfects the notice of appeal that was originally filed on October 15, 2007.

The sections required by 37 CFR 41.37 follow.

**Appl. No.** : **09/669,805**  
**Filed** : **September 26, 2000**

*Real party in interest*

This application is not assigned, and hence the inventor  
Scott C. Harris is the real party in interest.

**Appl. No.** : **09/669,805**  
**Filed** : **September 26, 2000**

*Related appeals and interferences*

Application number 09/780,248 is a continuation in part of this (appealed) application. '248 is still under appeal, and has had a judgment rendered on the merits. That judgment is currently under reconsideration.

**Appl. No.** : **09/669,805**  
**Filed** : **September 26, 2000**

*Status of claims*

Claims 2, 5, 7, 13-29 are pending in the case. Claims 7, 23 and 24 had been withdrawn based on a previous restriction.

Claims 1,3,4,6 and 8-12 have been cancelled during prosecution.

Claims 2, 5, 13-22 and 25-29 are rejected and are appealed herein.

**Appl. No.** : **09/669,805**  
**Filed** : **September 26, 2000**

*Status of amendments*

It appears that the amendment after final filed on August 28, 2007, and then again on September 17, 2007 was never actually considered by the patent office, due to their allegation that the drawing change was in improper form. While applicants attempted to obviate this rejection by refiling that drawing change, the patent office again improperly refused to consider the substance of the amendment after final, alleging that even though the drawings were clearly labeled as replacement sheets, that they somehow, inexplicably, still were not replacement sheets.

Accordingly, since there has been no communication indicating entry, it would appear that these amendments either were not entered or were not considered and thus not entered.

Appl. No. : 09/669,805  
Filed : September 26, 2000

*Summary of claimed subject matter*

Claim 2 requires hosting an Internet auction for an item on a first computer that is connected to the Internet. This is described in the originally filed specification on page 4, lines 1-13. The first computer is described as a remote terminal 110, 120, 130, see page 4 lines 7-10 and figure 1.

Claim 2 requires that the system allows placing bids to purchase an item from a second computer. Page 4 line 6 describes that the server keeps track of all the bids, and that the bids are from remote terminals 110, 120 and 130, connected over the Internet to the server. Thus, any of these computers can be the "second computer".

The bids are described page 5, lines 7-20.

Claim 2 further require storing information on a second computer about a bid that will be required to overcome any current bids on the item, see the last three lines of page 15 which describe the variable win\_bid, which is the amount necessary to win the current auction until outbid. The first 10 lines of page 16 describe this as stored on the client computer, or in the words of claim 2, "the second computer". This also describes that the computer can determine substantially immediately whether the entered bid is higher than the current bid amount.

**Appl. No.** : **09/669,805**  
**Filed** : **September 26, 2000**

Claim 7 is withdrawn and hence is not appealed herein.

Claim 13 requires hosting an auction on a first computer that allows a plurality of users at remote locations. See page 4 lines 1-13. The first computer is described as a remote terminal 110, 120, 130, see page 4 lines 7-10 and figure 1.

Claim 13 requires that one of the bids is the highest bid and another bid can exceed that highest bid. See page 4, lines 1-13, and the variables described in the bottom nine lines of page 15. The bids are described page 5, lines 7-20.

Claim 13 requires that the first computer displays the current winning amount but does not display the highest bid. See page 6 lines 17 through 24, page 10 lines 1 through 3. This is described as being an amount that exceed all the other bids on the item but which may be less than, or the same as, the highest bid. See page 6 lines 17 through 24, and page 10 lines 1 through 3. Claim 13 further enables a quick bid that will automatically exceed the highest bid. See page 19 line 19 through page 20 line 24.

Claim 18 requires a server 100 running a program that displays information about an item to be auctioned and accepts bids and keeps track of the maximum bid see page 4 lines 1-13. Claim 18 further requires a client 110, 120, 130 enabling and

**Appl. No.** : **09/669,805**  
**Filed** : **September 26, 2000**

sending a bid to the server with a single click. See the quick bids described page 19 line 19 through page 20 line 24.

Claim 25 requires hosting an auction on a first computer, see page 4 lines 1-13. Claim 25 requires displaying the current pricing keeping secret a current maximum bid. See the NEW\_BID, MIN\_BID and WIN\_BID variables described in the bottom nine lines of page 15. Claim 25 requires displaying an icon that allows a bid to be placed that is high enough to exceed the current maximum bid without contacting the first computer, see the last two lines on page 19 through the first four lines on page 20. The second computer determines whether this entered bid is higher than the secret maximum bid without contacting the first computer.

Appl. No. : 09/669,805  
Filed : September 26, 2000

*Grounds of rejection to be reviewed on appeal*

Have the drawings been properly corrected?

Does the specification provide proper antecedent basis for the claimed subject matter under 35 USC 112?

Are the claims properly rejected under 35 USC 112 as failing to comply with the written description requirement and/or the enablement requirement?

Are the claims properly rejected under 35 USC 112 as being indefinite?

Are claims 2, 5, 22, 25 and 26 properly rejected based on 35 USC 102 based on eBay's "proxy bidding"?

Are claims 13-17 and 21 properly rejected under 35 USC 103 as being obvious based on "proxy bidding" in view of Hartmann?

*Argument*

*Objections to the Drawings*

Appl. No. : 09/669,805  
Filed : September 26, 2000

Drawing corrections were twice submitted after final. These drawing corrections were first rejected since they were not replacement drawing sheets - stating that annotated drawing sheets were no longer acceptable. HOWEVER, this was in clear contradistinction to page 4 of the May 15 2007 Official action, which had an entire section allowing "Annotated Drawing Sheets".

Nonetheless, the drawings were resubmitted as replacement drawing sheets. Nothing in the "information" or the rules or MPEP requires that these replacement drawing sheets be free of markups and/or annotations. Nonetheless, the Patent Office improperly refused to consider these also, improperly stating that since these drawings had markings, they were not replacement sheets.

Since the drawing corrections were properly submitted, and obviated the Examiner's objections, it is respectfully submitted that the drawings should have been considered and that the issues have been obviated.

#### *Rejections Under Section 112*

This includes: Does the specification provide proper antecedent basis for the claimed subject matter, are the claims properly rejected under 35 USC 112 as failing to comply with the written description requirement and/or the enablement

Appl. No. : 09/669,805  
Filed : September 26, 2000

requirement, and are the claims properly rejected as being indefinite?

Many of these issues were obviated by the amendment after final.

Certain claims, including claims 14-16 and 20, stand rejected as not being supported by the originally filed specification. These contentions are respectfully traversed for reasons set forth herein. Primarily, however, it is important to note the claims 14, 15, 16 and 20 were original claims, that were originally filed with this application on its September 26, 2000 filing date. Hence, these claims logically must be supported by the original specification. The exact language of the claims was added to the specification after final to obviate any antecedent basis rejection.

The first objection is to claim 14, which states that the "quick bid overcomes only those bids which are known". Note that claim 14 is an original claim, and it is hence logically inconsistent to contend that the specification does not support this claim. In any case, since this was an original claim, the subject matter of this claim was added to page 19 of the specification.

The objection to claim 15 is respectfully traversed for similar reasons: claim 15 is an original claim, and cannot

Appl. No. : 09/669,805  
Filed : September 26, 2000

logically be unsupported by the specification. In any case, the original specification describes extensively that some bids are, in effect, secret and not known. See for example page 10 lines 10-17.

The objection to claim 16 is similarly traversed. The determining both secret bids and non-secret bids is clearly shown page 20 lines 8-10. In any case, the subject matter of original claim 16 was added to page 20 of the specification, since this was an original claim.

Similarly, the subject matter of claim 17 has been added to page 20, since claim 17 was an original claim.

The objection to claim 20 has been added to this section.

These claims are ORIGINAL claims, and cannot logically be considered as new matter or in any way unsupported. Since these were original claims, and as such, clearly cannot be new matter.

The typographical error in the changes to figure 5 was corrected.

Claims 2, 13, 18, 22 and 26 stand objected to based on informalities. Many of these contentions are respectfully traversed.

The suggestions to claim 2 were adopted.

Claim 13 is believed completely clear as currently written.

Claim 18 defines a programmED computer.

The objections to claim 22 were obviated herein by amendment.

**Appl. No.** : **09/669,805**  
**Filed** : **September 26, 2000**

Claims 25 and 26 were amended.

The objection to claim 29 is respectfully traversed. The bid is certainly placed using a single click according to the language of figure 7A and 7B. Admittedly, there is a confirmation of whether we want the bid to be actually placed, but the bid itself is placed with a single click. See figure 7A which shows quick bid, shows that a single "click", is made on the quick bid. A single click on that quick bid places the bid. While admittedly thereafter there may be a confirmation, the bid itself is placed with a single click.

With all due respect, the rejection reads this claim as though the claim read "the entire bid is placed with a single click and that no other clicks are necessary to confirm.". Claim 29 does not recite this -- it only says that the bid is "placed". Figure 7A clearly shows one click on the quick bid to place the bid.

Claims 2, 5, 13-17, 21, 22, 25, 26 and 29 stand rejected as allegedly failing to comply with the adequate written description requirement. These contentions are factually incorrect, and are respectfully traversed.

For claim 2, the objection queries how the amount required to overcome any current bids is used to determine whether an entered bid is higher than the current bid without the user viewing the amount required. As explained on page 16, the local "applet" runs on the user's terminal. This is updated with

Appl. No. : 09/669,805  
Filed : September 26, 2000

minimum bid amounts, and winning bid amounts. The agent is therefore able to accept or reject the bid substantially immediately. See page 16 lines 9-10. Figure 6A (page 16 line 17-18) may be executed when maximums are known to all agent applets. However, if the new bid is greater than the winning bid at 640, see the bottom of page 17, other bids which are going to be released at later times may be investigated by the agent manager. The winning bid may not be known to all agents, see the bottom of page 17. The test at 650 determines if the current bid is greater than the minimum, and therefore this determines whether the entered bid is higher than a current bid amount, and does so without contacting the first computer.

The "current winning amount" in claim 13 does not mean that it will win the auction; it only means that it is higher than any known bid. There may be a higher bid somewhere out there, that is maintained secret. Just like on eBay today: just because you are the winner an hour before the end of the auction does not mean that you will win -- there may be others willing to place bids that exceed your winning position.

With all due respect, the objection to claim 25 simply states that the bid is allowed to be placed without contacting the first computer. Claim 25 does not recite that the bid is actually placed with the first computer without contacting the first computer.

**Appl. No.** : **09/669,805**  
**Filed** : **September 26, 2000**

Claims 2, 5, 22 and 25 stand rejected under 35 USC 112, second paragraph, as allegedly being indefinite.

Regarding claim 2, applicant agrees that allowing placing bids is not the same as placing bids. However, this method limitation of allowing bids to be placed certainly does further limit the claim, since it states that the bids are allowed to be placed. This clause also states that there is a second computer connected to the Internet.

Regarding claim 5, the indefiniteness rejection is respectfully traversed, and it is unclear what relevance to the "user" has to a claim that states providing the bids to an agent program which keeps the bid secret until a time of day and day specified by the indication. It is not understood what relevance this has to "whether the user really knows the current bid and further how can you keep an entered bid secret by the user". Claim 5 says nothing about the user: it only says providing the bids to an agent.

Applicants respectfully traverse the objection that a second computer must be recited in claim 13. Claim 13 defines hosting the auction, and the ability to bid.

The objection to "enabling the quick bid" is also respectfully traversed, the ability to allow something to happen is certainly a limitation, whether it actually is recited as happening or not.

**Appl. No.** : **09/669,805**  
**Filed** : **September 26, 2000**

With regards to claim 16, applicants respectfully traverse the objection for similar reasons to those discussed above. With regard to claim 22, applicants respectfully traverse the objection for similar reasons to those discussed above. With regard claim 25, the "current maximum bid" is believed completely clear in context. Hence, this contention is respectfully traversed.

*Rejections Based on Prior Art*

Claims 2, 5, 25, 26 and 28 stand rejected under 35 USC 102b as allegedly being unpatentable over Ebay's proxy bidding, herein "Ebay". This contention is respectfully traversed.

Claim 2 requires hosting an Internet auction on a first computer connected to the Internet, allowing placing bids for amounts to purchase from a second computer, and storing information on the second computer about an amount which will be required to overcome any current bids on the item. Claim 2 also requires that information indicative of the amount is not viewable on the second computer, but allows local determination of whether an entered bid is higher than a current bid amount without contacting the first computer.

With all due respect, the patent office interprets this language as though it means nothing at all. Claim 2, for example, allows placing bids to purchase an item from a second

**Appl. No.** : **09/669,805**  
**Filed** : **September 26, 2000**

computer. Since claim 2 allows placing the bids from the second computer, claim 2 recites capabilities on the second computer that so allows. However, the rejection attempts to read this language out of the claim 2. This is improper.

Claim 2 also allows that the second computer that allows placing bids to purchase the item, stores information about how much it will take to overcome the current bid, and that an amount is not viewable on the second computer. In other words, claim 2 require storing secret information, that "allows local determination, at the second computer, of whether an entered bid is higher than the current bid amount without contacting said first computer". While claim 2 does not use the word "secret", it does recite that the information "cannot be viewed ... by a user". A person having ordinary skill would likely understand that this is, therefore, secret.

The eBay proxy bidding allows storing an amount of the bid to be placed at some later time. In eBay, a user can, for example, have a current bid amount of one dollar, and store a proxy bid of five dollars. The proxy bidding system will automatically bid an amount, up to the maximum entered bid, and to maintain the user's high bid. However, nothing in the proxy bidding system stores information "indicative of the amount that will be required to overcome any current bids (and) cannot be viewed by a user of the second computer". eBay's proxy bidding

Appl. No. : 09/669,805  
Filed : September 26, 2000

stores everything on the computer hosting the auction, and does not store secret information on the second computer that places the bids, as claimed.

Claim 2 allows determining whether the data is higher than the current bid amount without contacting the first computer. This can enable faster bidding, and more efficient systems.

Consider the unexpected advantage of this system. When a proxy bid has been entered, as is done on eBay, a current bid amount may be one dollar as in the example above, but the proxy bid amount may be five dollars. A user who places a bid does not know what that proxy amount is. Moreover, there are certain reasons to keep that amount secret. Accordingly, the present claim 2 requires storing "information ... that cannot be viewed" at the second computer. The second computer that places the bids stores this secret information, and allows local determination of whether that bid should be accepted without contacting the first computer.

These limitations are not disclosed by the proxy bidding document, and in fact, have never been part of the proxy bidding system.

Moreover, with all due respect, all claim limitations must be considered and the current rejection has not so considered these limitations.

Consider, by analogy, the law on printed matter, such as set forth in In re Miller, 164 USPQ 46 (CCPA, 1969). In that case,

Appl. No. : 09/669,805  
Filed : September 26, 2000

the CCPA required that the examination take into account the claimed printed matter, even though printed matter by itself was unpatentable. Similarly here - the Patent office must consider all claim limitations. The patent office is not entitled to ignore any claim limitation, whether it is the method steps or the information in the database. Information in the database that is recited in the claim must be given patentable weight. Miller, by analogy, seems squarely on point.

In rejecting claim 2, the rejection's interpretation of what eBay does, does not properly consider the limitations of the claim. Claim 2 requires that information is stored on the second computer about an amount that will be required to overcome any current bids on the item. EBay does not currently store that kind of information on the local computer. EBay may store information about what the next bid increment will be, but not store information on the second computer about the amount that will be required to overcome any current bids on the item as claimed. Ebay stores this only on the server.

Since the prior art does not disclose storing information on the second computer of the type claimed, specifically about an amount that will be required to overcome current bids on the item, and the amount is secret and enables local determination of whether an entered bid is higher than the current bid without contacting the first computer, claim 2 recites elements that are

Appl. No. : 09/669,805  
Filed : September 26, 2000

not disclosed by the eBay proxy bidding document, and hence claim 2 is not properly rejected as being anticipated thereby.

Claim 5 requires that the bids also include an indication of time and date and that the placing provides the bids and keeps those big secret until a time of day and date that is specified by the indication. Proxy bidding keeps the bid secret only until they are necessary to overcome the current bid. Applicant is sensitive to the fact that the time when those proxy bids become necessary to overcome the current bid must necessarily happen at some time and some day. However, claim 5 requires that the bids include an indication of time and date, and that the bids are kept secret until that time and date. While eBay's proxy bidding does keep the bid secret until some time, it is not a time and date that is included as an indication within the bid itself as claimed. Therefore, claim 5 should be allowable.

Claim 25 defines a method, which has a first computer that hosts an auction, and accepts bids from at least one other computer. Claim 25 requires displaying an icon that allows a bid to be placed without contacting the first computer. The icon enables placing a bid that is high enough to exceed the current maximum bid. Claim 25 also requires determining whether an entered bid is higher than the secret maximum bid amount and informing the user without contacting the first computer.

The eBay proxy bidding does not disclose that the second computer store secret information, that the second computer can

**Appl. No.** : **09/669,805**  
**Filed** : **September 26, 2000**

use that information without contacting the first computer, and nothing in eBay proxy bidding discloses an icon that allows a bid to be placed without contacting the first computer. Ebay Proxy bidding does not disclose that bid being high enough to exceed the current maximum bid. As explained above, the eBay proxy bidding document does not disclose storing this special kind of secret information on the local computer. The rejection is therefore incorrect.

Therefore, claim 25 should be allowable, along with claims 26 and 28 that depend therefrom.

To reiterate the above, there is not one word in the cited Ebay proxy bidding prior art about the second computer (the one that is placing bids, not the one that is hosting the auction) storing information that allows overcoming all current bids and does so without contacting the first computer. There is not one word about this in the cited eBay proxy document. Therefore, the rejection based on 35 USC 102 does not meet the patent office's burden of providing a *prima facie* showing of unpatentability, since the cited prior art does not disclose each and every element of the rejected claims.

Reversal of this rejection is hence requested.

Rejection of claims 13-17 and 21 under 35 USC 103 based on eBay in view of Hartmann.

Appl. No. : 09/669,805  
Filed : September 26, 2000

Claim 13 recites a method of automated auction bidding that uses a first computer connected to the Internet to host an auction. In the words of claim 13, the first computer does not display "a minimum bid amount that will be required to exceed said highest bid". Claim 13 further defines "enabling a quick bid whereby a user can automatically bid an amount which will exceed the highest bid with a single click".

The rejection apparently admits that the proxy bidding document does not show this latter limitation.

The secondary reference to Hartmann teaches a system of a quick item purchase. However, this quick item purchase is wholly different than a quick auction win.

Admittedly, Hartmann allows an item to be purchased using a single mouse click. However, considering the scope and contents of Hartmann, one clearly sees that the item being purchased is a fixed price item, on a site that sells many of these items. It is like a retail store. The user knows there is a fixed price, and the user can easily decide that they want to purchase this item.

In contrast, claim 13 recites features which are specific to an auction. These features would not be used in a Hartmann fixed price item order scenario. In a Hartmann order scenarios such as taught by Hartmann, there is an established exact price. The single click of Hartmann puts together that established price

Appl. No. : 09/669,805  
Filed : September 26, 2000

with user information and processes the order. A one click auction, on the other hand, requires actually determining the price that will be used to end the auction. Hartmann teaches nothing about how to do that part, and never contemplated it. It is antithetical to auction teaching. Nothing in eBay teaches how to establish that price and keep secret that price.

A one click end to an auction is quite simply antithetical to any established conventional teaching in the art. A typical auction attempts to find the highest possible price for the item. A one click end to an auction goes against that established wisdom.

Therefore, a person having ordinary skill in the art would not be motivated to combine Hartmann with eBay. Even if one wanted to make that combination, one would obtain no guidance on how to do so.

Even if the combination where made, one would only obtain an ebay style bidding system with a Hartmann style "one click purchase" of an item with a fixed price. Nothing in the combination of prior art shows a one click purchase of an item in a bidding style scenario.

Therefore, claim 13 should be allowable along with the claims which depend therefrom.

Moreover, the so called "KSR factors" for obviousness further demonstrates the unobviousness of this system.

Appl. No. : 09/669,805  
Filed : September 26, 2000

First of all, nothing in the prior art discloses the same result as claim 13, and in fact, nothing in the prior art would enable ending an auction with a single click. Nothing teaches going against the conventional wisdom that an auction should get the highest possible price by going to the very end.

Moreover, claim 13 requires that the first computer does not display "a minimum bid amount that will be required to exceed said highest bid". However, even though there is this secret information, the non-displayed "minimum bid amount that will be required to exceed said highest bid", still claim 13 enables a quick bid that can automatically bid an amount that will exceed the highest bid with a single click. This is not fairly suggested by the hypothetical combination of prior art.

Nothing in either piece of prior art teaches automatic bidding of an amount that will exceed non-displayed bid amounts.

Nothing in either piece of prior art discloses anything about a quick bidding scenario. Hence, since nothing in either piece of prior art discloses this, it is clear that nothing in the combination of the two references could possibly so disclose. This is quite antithetical to the usual teaching of an auction progression, and hence is far from being "predictable".

This is certainly not combining prior art elements according to known methods to yield predictable results. There is nothing predictable about using a one click system to end an auction early. In fact, doing so defies conventional wisdom.

**Appl. No.** : **09/669,805**  
**Filed** : **September 26, 2000**

Since there are no predictable results provided by claim 13, it is also not substitution of one element for another to obtain predictable results, use of a known technique to include a similar device, applying a known technique to a known device to yield predictable results, obvious to try to obtain predictable solutions, or a variation that would have been predictable to one having ordinary skill in the art. In fact, the results here are wholly unpredictable: they defy conventional wisdom, and therefore are wholly unobvious even under the KSR criteria.

The dependent claims are further obvious. Claim 14 specifies that only some of the bids are overcome, claim 15 specifies the times of the bids, the distinctions of which have been explained in detail above.

Claim 17 defines an extra fee for a secret versus non-secret bids. The previous rejection had stated that there were no method limitations in this claim, however this is incorrect since claim 17 recites an action that includes an extra fee. Charging a fee is certainly an action, and the patent office is not entitled to ignore these limitations.

Claims 18-20 and 29 similarly stand rejected based on eBay in view of Hartmann. This is even further respectfully traversed. Nothing in Hartmann teaches or suggests how a bid could be sent to a server with one click. Nothing in eBay teaches or suggest this either. The rejection is entirely based on hindsight, at nowhere is there any teaching or suggestion of

**Appl. No.** : **09/669,805**  
**Filed** : **September 26, 2000**

sending a bid with a single click. Therefore, the combined "scope and contents" does not disclose the claimed features.

Therefore, and in view of the above, the current rejection is incorrect, and should be reversed.

Respectfully submitted,

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Appl. No. : 09/669,805  
Filed : September 26, 2000

*Claims appendix*

2. A method comprising:

hosting an Internet auction for an item on a first computer connected to the Internet;

allowing placing bids for amounts to purchase said item from a second computer, connected to the Internet; and

storing information on the second computer about an amount that will be required to overcome any current bids on the item, which information indicative of the amount that will be required to overcome any current bids cannot be viewed by a user of the second computer, but which information allows local determination, at the second computer, of whether an entered bid is higher than a current bid amount without contacting said first computer.

5. The method as in claim 2 wherein said bids include an indication of time and date, and said placing comprises providing bids to an agent program, which keeps the amounts of the bids secret until a time of day and date that is specified by the indication associated with the bid.

13. A method of automated auction bidding, comprising:

on a first computer connected to the Internet, hosting an auction which allows a plurality of users at remote locations,

**Appl. No.** : **09/669,805**  
**Filed** : **September 26, 2000**

that are remote from a location of said first computer, to bid on an item, where one of the plurality of users has a highest bid which represents a maximum amount that the one user is willing to pay, and at least one other of the plurality of users can bid an amount that exceeds said highest bid, said first computer displaying a current winning amount, which is an amount that exceeds all the other bids on the item, but which may be less than, or the same as, said highest bid, depending on a relationship between said highest bid and said all the other bids, and said first computer not displaying said highest bid, and not displaying a minimum bid amount that will be required to exceed said highest bid; and

enabling a quick bid whereby a user can automatically bid an amount which will exceed the highest bid with a single click .

14. The method as in claim 13 wherein there are a plurality of bids, some of which are known and others of which are secret, and wherein said quick bid only overcomes those bids which are known.

15. The method as in claim 14 wherein said plurality of bids includes a plurality of bids, associated with times when those maximum bids can be made, and only those bids whose times have been reached are known.

**Appl. No.** : **09/669,805**  
**Filed** : **September 26, 2000**

16. The method as in claim 15 further comprising enabling an action which allows determining both secret bids and non-secret bids.

17. The method as in claim 16 wherein said action includes an extra fee beyond that which would be charged for only non-secret bids.

18. A system, comprising:  
a server running a program that displays information about an item to be auctioned, and accepts bids on said item, and keeps track of a maximum bid; and  
a client, enabling and sending a bid to said server with a single click which includes an amount of a bid.

19. The system as in claim 18, wherein said server automatically updates at least one screen being seen on at least one client to automatically show new bid amounts.

20. The system as in claim 18, wherein said client allows sending a plurality of bids, to be executed at a plurality of times.

**Appl. No.** : **09/669,805**  
**Filed** : **September 26, 2000**

21. The method as in claim 13, wherein an amount of said quick bid is displayed responsive to a specified action by the user.

22. The method as in claim 2, wherein said auction is one in which the server stores maximum bid amounts by users, but only displays a current bid amount without displaying said maximum bid amount, and wherein said values stored at said second computer determines whether an entered bid is higher than said maximum bid amounts.

25. A method, comprising:

on a first computer connected to the Internet, hosting an Internet auction for at least one item; accepting bids on said at least one item from at least one other computer, connected to said first computer, and displaying a current price for the item on said other computer, and keeping secret a current maximum bid which has been placed for the item from a user of said other computer; and

displaying an icon on said other computer which allows a bid to be placed without contacting said first computer, wherein said icon enables placing a bid which is high enough to exceed said current maximum bid, and

in said second computer, determining whether an entered bid is higher than said secret maximum bid amount, and informing a

**Appl. No.** : **09/669,805**  
**Filed** : **September 26, 2000**

user at said second computer without contacting said first computer.

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26. The method as in claim 25, further comprising running an applet on said second computer, which includes information enabling determining whether an entered bid is higher than said maximum bid.

29. The method as in claim 25, wherein said icon allows said bid to be placed using a single click.

**Appl. No.** : **09/669,805**  
**Filed** : **September 26, 2000**

*Evidence appendix*

(none)

**Appl. No.** : **09/669,805**  
**Filed** : **September 26, 2000**

*Related proceedings appendix*

(attached)